

## **EIGHTEENTH DIVISION**

**[ CA-G.R. CV. NO. 04184, October 28, 2014 ]**

**FEDERICO DENISA AND SIMPLICIO PALANCA, PLAINTIFFS-  
APPELLEES, VS. DEVELOPMENT BANK OF THE PHILIPPINES,  
ILOILO BRANCH, DEFENDANT-APPELLANT.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

Before us is an Appeal<sup>[1]</sup> from the February 8, 2011 Decision<sup>[2]</sup> of the Regional Trial Court of Negros Occidental, 6th Judicial Region, Branch 54, Bacolod City in Civil Case No. 00-11129 for Annulment of Sheriff's Sale with Reconveyance and Damages, the dispositive portion thereof reads:

"WHEREFORE, judgment is rendered declaring the Foreclosure of the Real Estate Mortgage on January 6, 1999 and the Certificate of Sale dated January 20, 1999 by the Provincial Sheriff of Negros Occidental null and void; and, that the principal loan of P3,500,000.00 is deemed fully paid.

With costs *de officio*.

SO ORDERED."

The facts of the case as culled from the records are as follows:

This case stemmed from a complaint<sup>[3]</sup> lodged by plaintiffs-appellees Federico Denisa and Simplicio Palanca against defendant-appellant Development Bank of the Philippines (DBP) Iloilo Branch before RTC Branch 54 for Annulment of Sheriff's Sale with Reconveyance and Damages.

Plaintiffs-appellees alleged in the complaint that they obtained a loan from defendant-appellant in the amount of THREE MILLION FIVE HUNDRED THOUSAND PESOS (P3,500,000.00) for the purchase of a set Purse Seiner fishing boat. They executed a Promissory Note<sup>[4]</sup> dated October 6, 1994 for the said loan which was secured by a real estate mortgage as well as a chattel mortgage.<sup>[5]</sup>

Plaintiffs-appellees further alleged that sometime in February 1995, the fishing boat sustained heavy damage when its sonar fishfinder was hit by lighting prompting them to dock the same at its home port where it sustained further damage when another vessel accidentally bumped it, all due to force majeure or an act of God; plaintiffs-appellees then asked defendant-appellant to condone the interest charges of their loan pursuant to Article 1174<sup>[6]</sup> of the Civil Code; notwithstanding the same, defendant-appellant foreclosed the chattel mortgage on the fishing boat thereby

leaving the former without any means of paying its loan obligation; plaintiffs-appellees then proposed a scheme of payment where they will pay for the principal obligation only in the amount of TWO MILLION THREE HUNDRED THOUSAND PESOS (P2,300,000.00) less their claim for damages, in a period of one year but defendant-appellant did not agree; according to plaintiffs-appellees, their payment to defendant-appellant already reached FOUR MILLION SEVEN HUNDRED SIXTY-SIX THOUSAND ONE HUNDRED SEVENTY-THREE PESOS AND SEVENTY-SEVEN CENTAVOS (P4,766,173.77), if we add their payments, the proceeds of the auction sales and the payment made by the Government Service Insurance System (GSIS) who insured the subject fishing boat; with such payments, their obligation was already extinguished and when defendant-appellant still foreclosed the real estate mortgage, as shown by the certificate of sale, then the same is clearly null and void, hence, this suit.

Plaintiffs-appellees then prayed that the foreclosure of the real estate be declared null and void together with the sheriff's sale; the reconveyance of the real properties subject of the sheriff's sale in their favor; and that they be paid moral and exemplary damages as well as attorney's fees and litigation expenses.

In their Answer with Counterclaim, defendant-appellant denied the material allegations in the complaint and by way of affirmative/special defenses averred that: plaintiffs-appellees do not have a cause of action against it; when the former offered to surrender the fishing fleet, there was symbolic delivery of the real properties subject of the the real estate mortgage as well and they are now estopped from claiming that the foreclosure of the real estate and the chattel were void; plaintiffs-appellees obligation to pay its loan is not extinguished by the loss of the sonar fishfinder because its obligation was not to deliver the said thing but to pay a sum of money hence, the applicable law is not Article 1174 of the Civil Code but Article 1263;<sup>[7]</sup> when the sonar fishfinder was hit by lightning, plaintiffs-appellees were already in default of their quarterly payments hence Article 1165, par 3<sup>[8]</sup> applies; plaintiffs-appellees are guilty of forum shopping as there is a pending case filed by them against defendant-appellant in RTC Branch 62, Bogota City docketed as Civil Case No. 807 for accounting with prayer for preliminary injunction and temporary restraining order seeking to enjoin the latter from foreclosing the mortgage; their total outstanding obligation when the account was recommended for foreclosure on September 26, 1997 amounted to SEVEN MILLION FOUR HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED FORTY PESOS AND FOURTEEN CENTAVOS (P7,492,440.14) or SIXTY-NINE POINT TWENTY-SIX PERCENT (69.26%) arrearages equivalent to non payment for nine (9) months; defendant-appellant was initially enjoined from foreclosing the real estate mortgage pursuant to an injunction issued in Civil Case No. 807 but the same was lifted when plaintiffs-appellees failed to put up additional bond per PD 385, hence the foreclosure proceeded on January 6, 1999.

Defendant-appellant then prayed that plaintiffs-appellees be ordered to pay the deficiency claim that may be proved during trial, moral and exemplary damages as well as litigation expenses.

Pre-trial was then conducted and per the Pre-Trial Order<sup>[9]</sup> dated March 6, 2001, the parties agreed on the following stipulation of facts:

1. The existence of the defendant-bank is admitted;
2. That the defendant is a government financial institution;
3. That the plaintiffs Federico Denisa and Simplicio Palanca secured the loan from defendant;
4. The Real Estate Mortgage and the Chattel Mortgage are admitted by the defendant to secure the P3,500,000.00 loan payable in three (3) years in ten (10) equal quarterly installments;
5. That the defendant-bank foreclosed the chattel mortgage and its accessories and the real estate mortgage;
6. The defendant admits that the fishing boat was also hit by a collision because of typhoon Pepang at the pier;
7. That the proceeds of the insurance was paid by GSIS to DBP for the account of plaintiffs and admitted by the defendant.

Thereafter, trial ensued. Plaintiffs presented Federico N. Denisa<sup>[10]</sup> and Renato S. Say<sup>[11]</sup> as their witnesses. Their testimonies are hereunder summarized as follows:

#### FEDERICO DENISA

He is the plaintiff in this case, the other plaintiff is Mr. Simplicio Palanca. He secured a loan from DBP, Iloilo Branch in the amount of P3,500,000.00 for which he executed a promissory note bearing his signature and that of his wife, Rebecca Denisa. Simplicio Palanca likewise signed the same as co-maker. Palanca owned the fishing boat that Denisa will buy with the proceeds of the loan. As security of the loan, a chattel mortgage was constituted over the said fishing boat as well as a real estate mortgage over Palanca's real properties. Sometime in February 1995, approximately five (5) months from its acquisition, the fishing boat's roof was hit by lightning causing damage to all its electrical parts including the generator, the radar and the sonar fishfinder. After that, they were fishing without a fishfinder and were not able to profit anymore. He then asked DBP, Iloilo Branch to restructure his account. He has already paid the amount of ONE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED FOURTEEN PESOS AND FIFTY-TWO CENTAVOS (P142,114.52) on January 1, 1995. He has also made a second payment in the amount of ONE HUNDRED FORTY-ONE THOUSAND ONE HUNDRED SEVENTY-EIGHT PESOS AND THIRTY-THREE CENTAVOS (P141,178.33). At that time he was still covered by the six (6) months grace period in accordance with their contract, where it was stipulated that for the first two installments, he will only be paying for the interests only and not for the principal amount yet. His request for restructuring was ignored by DBP, Iloilo Branch so he asked instead that the proceeds of the insurance of the fishing boat be released to him for the repair thereof. It was not released to him but DBP, Iloilo Branch facilitated the claim until it was eventually released after three years. The proceeds of the insurance was paid directly to DBP, Iloilo Branch. The fishing boat was eventually foreclosed by DBP, Iloilo Branch and the latter got all the proceeds of the auction sale. The real estate mortgage was also foreclosed by the

bank.

On cross-examination, the witness testified that: per his loan agreement with DBP, Iloilo Branch, he was obliged to pay ten (10) quarterly installments of THREE HUNDRED FIFTY THOUSAND PESOS (P350,000.00) starting on the ninth (9<sup>th</sup>) month from the date of release in October 14, 1994; he paid ONE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED FOURTEEN PESOS (P142,114.00) on January 30, 1995; his next payment was ONE HUNDRED FORTY-ONE THOUSAND ONE HUNDRED SEVENTY-EIGHT PESOS AND THIRTY-SIX CENTAVOS (P141,178.36) on May 31, 1995; his last payment was TWO HUNDRED THOUSAND PESOS (P200,000.00) on December 4, 1995 after which no personal payments was made by him; he is aware that it was stipulated in the mortgage contract that in case of non-payment of the installment due, he will be deemed in default and it will accelerate the whole obligation which will then become due and demandable; on March 13, 1995<sup>[12]</sup> and on September 12, 1995,<sup>[13]</sup> he wrote letters to DBP, Iloilo Branch where he informed the bank that he could not remit payment; another letter<sup>[14]</sup> was written by him on April 25, 1996 asking the bank to apply to his account the proceeds of the insurance and informing the latter of the damage that the fishing boat sustained; DBP Iloilo Branch replied per letter dated April 30, 1996 to the effect that his additional loan application must be denied as his equity was already insufficient and that with regard the insurance, claim, he needs to submit certain documents to process the same; in reply thereto, he sent a letter dated May 23, 1996 telling the bank to send to him the requirements for the processing of the insurance.

On re-direct, the witness testified that he received a letter from DBP Iloilo Branch dated October 6, 1994 informing him that quarterly installments will start at the end of the ninth (9<sup>th</sup>) month from initial release. His insurance claim, which he filed thru DBP, Iloilo Branch, was done within the nine (9) months grace period as in fact it was done within the sixth (6<sup>th</sup>) month. The insurance was eventually released to DBP but the latter did not inform him about it.

On re-cross, the witness testified that the loan was released on October 14, 1994. His insurance claim on the other hand, was made on March 13, 1996.

MR. RENATO SAY

He is the Sheriff IV of the Office of the Clerk of Court, Regional Trial Court of Bacolod City who was presented as a hostile witness. He identified the petition<sup>[15]</sup> for extra-judicial foreclosure of chattel and real estate mortgage filed by DBP dated November 28, 1996. Pursuant thereto, the auction was set on December 26, 1996 but the same did not push through because of a temporary restraining order issued by the Regional Trial Court of Bago City, Branch 62. The following chattel were eventually auctioned on September 26, 1997 namely: (1) F/B Conqueror II, (2) Skiff Boat; (3) F/B Steel Carrier; (4) F/B Beau, (5) F/B Yvanna Escort and (6) Steel Life Boat. There were three bidders for F/B Yvanna and the highest bidder was Florante Andan for TWO HUNDRED SIXTY-EIGHT THOUSAND PESOS (P268,000.00) as indicated in the minutes<sup>[16]</sup> of auction sale and the certificate<sup>[17]</sup> of sale. The other items were auctioned to DBP, Iloilo Branch which was the only bidder and its final bid price amounted of TWO HUNDRED NINETY-EIGHT THOUSAND THIRTEEN PESOS AND SIXTY-NINE CENTAVOS (P298,013.69) per certificate<sup>[18]</sup> of sale.

With regard the real estate mortgage, the notice of sale scheduled the auction on December 26, 1996 but the same did not push through because of a temporary restraining order also issued by the Regional Trial Court (RTC) of Bago City, Branch 62. It was reset again to October 15, 1997 but was again restrained by the RTC. It was finally auctioned on January 6, 1999 and DBP, Iloilo Branch was the highest bidder. Per the certificate<sup>[19]</sup> of sale, 17 parcels of land covered by the real estate mortgage were sold to DBP, Iloilo Branch for the amount of TWO MILLION FIVE HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED EIGHTY PESOS (P2,561,580.00).

The witness likewise testified that the total amount of the proceeds of the auction sales was more than FOUR MILLION NINE HUNDRED THOUSAND PESOS (P4,900,000.00). He likewise testified that the promissory note was not attached to the petition filed before their office and they only have the real estate mortgage.

On cross-examination, the witness testified that during the auction sale for the chattel, aside from him, the following persons were also present: Atty. Ibero, representative of DBP, Iloilo Branch; Mr. Federico Denisa; Mr. Florante Andan and Mr. Mabugat. Mr. Andan and Mr. Mabugat submitted their bids together with DBP, Iloilo Branch in the presence of Mr. Federico Denisa who made no objections at all.

With regard the auction sale of the real estate mortgage, the following participated in the proceedings and bid the corresponding amounts: Elenita Yulo Uy for TWO HUNDRED THIRTY-SIX THOUSAND FOUR HUNDRED PESOS (P236,400.00); Almer Tipawan represented by Atty. Allan Macasa for ONE HUNDRED EIGHTY-FIVE THOUSAND FOUR HUNDRED PESOS (P185,400.00); and Antonio Torres III for ONE HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED PESOS (P192,400.00). Their total bid was SIX HUNDRED FOURTEEN THOUSAND PESOS (P614,000.00). The said bidders bid only for certain parcels of land included in the real estate mortgage per their written bid<sup>[20]</sup> and it was only DBP, Iloilo Branch who bid for all the parcels of land included in the real estate mortgage. Counsel for the appellant's asked if the reason why the bidders bid only for particular parcels of land was because the others were sold already, the witness replied that he did not know.

On re-direct, the witness testified that the fishing net was not included in the bid list because it was merely an accessory of F/B Conqueror II and this was not questioned by the mortgagor when the property was seized. Mr. Denisa did not question it, it was even stored in his residence. Mr. Denisa was present in the bidding but he did not bid, he was just observing, he did not interpose any objection.

Defendant, on the other hand, presented the following witnesses: Crisanta G. Ibeno,<sup>[21]</sup> Lucia Destacamento<sup>[22]</sup> and Mr. Jose Bayot.<sup>[23]</sup> Their testimonies are hereunder summarized as follows:

#### CRISANTA G. IBENO

She is currently the Branch Manager of DBP, Iloilo Branch, prior to that, she was the Division Chief of the Account Management Division of the bank, the division in charge of packaging and evaluation of loans. As such, she was the one who packaged and evaluated the loan of plaintiffs amounting to THREE MILLION FIVE HUNDRED THOUSAND PESOS (P3,500,000.00). For the said loan, plaintiffs executed